Guide To The British Columbia *Labour Relations Code*

Province of British Columbia

Ministry of Skills Development and Labour

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Contents

PREFACE v

CHAPTER 1 - INTRODUCING THE LABOUR RELATIONS CODE 1

Purposes of the Code 1
Excluded Employees 2
Federal Jurisdiction 2

CHAPTER 2 - THE LABOUR RELATIONS BOARD 4

Duties under the Code 4
Structure and Composition 4
Jurisdiction 5
Powers of the Board 6
Remedial Authority 6
Filing an Application or Complaint 7
Reconsideration of Decisions 8
Role of the Minister of Skills Development and Labour 8

CHAPTER 3 - RIGHTS, DUTIES AND UNFAIR LABOUR PRACTICES 10

Duty of Fair Representation 11
Religious Objections 12

CHAPTER 4 - CERTIFICATION PROCESS 13

Constituting or Joining a Union 13
Application for Certification 14
Appropriate Bargaining Unit 15
Requisite Employee Support 16
Effect of Certification 17
Changing Union Representation 17
Decertification 17
Effect of Decertification 18
Successor Employers 18
Associated Companies 19
Council of Unions 19
Accredited Employers' Organizations 19

CHAPTER 5 - COLLECTIVE BARGAINING 20

Bargaining Procedures and Requirements 20
Duration 21
Continuation Clause 21
Joint Consultation and Adjustment Plans 21

First Collective Agreement 22

CHAPTER 6 - STRIKES, LOCKOUTS AND PICKETING 23

Work Stoppages 23
Bargaining Requirements 23
Strike and Lockout Votes 24
Notice Requirements 25
Continuation of Benefits 25
Picketing 25
Replacement Workers 26

CHAPTER 7 - ESSENTIAL SERVICES 27

CHAPTER 8 - MEDIATION AND DISPUTE RESOLUTION ASSISTANCE 29

Mediation Services 29
Special Mediator 29
Fact Finding 30
Last Offer Votes 30
Industrial Inquiry Commission 30

CHAPTER 9 - ARBITRATION PROCEDURES 31

Grievance Arbitration 31
Collective Agreement Arbitration Bureau 31
Expedited Arbitration 32

CHAPTER 10 - UNORGANIZED EMPLOYEES 33

APPENDIX A - LABOUR RELATIONS CODE SECTIONS 34

APPENDIX B - LABOUR RELATIONS TERMS 40

EMPLOYMENT STANDARDS BRANCH OFFICES 44

Preface

The *Labour Relations Code* of British Columbia is the statute that regulates labour relations and collective bargaining in this province. Whether you are an employee or an employer, it is important that you understand your rights and obligations under the Code. This guide is an introduction to the operation of the *Labour Relations Code*.

As you read through the information that follows, bear in mind that this guide is not a legal document. Rather, it is intended as an introduction for those who are unfamiliar with the *Labour Relations Code*. The Code is subject to legal interpretation by the Labour Relations Board. If you require current or more detailed information, you should consult the Code itself as well as written decisions of the Labour Relations Board.

The Board is always willing to provide general information about the Code or the Board's operations but will not provide legal advice. People with specific problems or questions related to labour law should consult an advisor who is familiar with the terms of the Code and the interpretations given to it by the Labour Relations Board.

Copies of the *Labour Relations Code* may be obtained by contacting:

Crown Publications Inc.
521 Fort Street
Victoria BC V8W 1K8
Phone: 250 386-4636
Fax: 250 386-0221

Copies of the Labour Relations Regulation and the Labour Relations Board Rules are also available at Crown Publications. The Regulation governs voting procedures and trade union membership evidence requirements under the Code, while the Rules cover the administrative practices and procedures used by the Board.

Copies of the written decisions of the Labour Relations Board can be viewed on the Board's website: http://www.lrb.bc.ca

Chapter One
Introducing The Labour Relations Code

The *Labour Relations Code* is primarily concerned with collective bargaining and labour-management relations in this province. The Code guarantees the right of every employee to join a union:

> Every employee is free to be a member of a trade union and to participate in its lawful activities [Section 4 (1)].

Employers are equally free to be members of employers organizations.

Many of the Codes provisions are designed to protect these fundamental freedoms. Indeed, the Code prohibits any conduct that is likely to interfere with the exercise of an individual's rights under the Code. Anyone who engages in conduct prohibited by the Code commits an unfair labour practice.

If a group of employees wants to be represented by a union, the Code provides the means for that union to be legally recognized as the exclusive bargaining agent for those employees. This recognition is called "certification" and carries with it certain rights and obligations. The union acquires the right to bargain with the employer on behalf of the employees it represents (the bargaining unit) and, on their behalf, to enter into a collective agreement setting out the terms and conditions of their employment. In return for that right, the union has the duty to represent all of the employees in the bargaining unit in a manner which is not arbitrary, discriminatory or in bad faith, whether or not those employees are members of the union.

Even where a union has not sought certification under the Code, an employer may agree to acknowledge the union as bargaining agent for the employees and to conclude a collective agreement with the union. This is called voluntary recognition. In such cases the union will normally have the same rights and be subject to the same obligations under the Code as a certified union. The Board, however, must be satisfied that the voluntary recognition has been approved by the employees affected.

The Code governs most aspects of the relationship between unions and employers. It contains provisions designed to promote collective bargaining and sets out certain basic standards for every collective agreement. If the union and the employer are unable to reach an agreement, the Code permits strikes, lockouts and picketing (within certain legal constraints) to pursue bargaining demands. However, the Code prohibits strikes and lockouts during the term of a collective agreement. All disputes arising during the term of a collective agreement must be resolved without a work stoppage by arbitration or some other method agreed to by the parties. The Code provides various types of assistance to the parties to resolve both mid-contract and collective bargaining disputes.

There is provision for the Minister of Skills Development and Labour to appoint a committee of special advisors to review the Code. Such committee would review the

operation of the Code and make recommendations to the Minister on the need for changing the Code.

Excluded employees

Not every worker in British Columbia is covered by the *Labour Relations Code*. Only those persons who meet the Code's definition of an employee are entitled to exercise collective bargaining rights. Under the Code, the following persons are not considered to be employees:

- Anyone who performs the functions of a manager or superintendent; or,
- Anyone employed in a confidential capacity in matters relating to labour relations or personnel.

The collective bargaining rights of some groups are addressed under other legislation (e.g., *Public Service Labour Relations Act* and *Public Education Labour Relations Act*). These acts also provide exclusions from collective bargaining based on the principle of avoiding situations where union membership would create a conflict with job responsibilities.

Dependent contractors and supervisors are not excluded from the application of the Code. A dependent contractor is someone who performs work or services under contract to another person under such terms and conditions that he or she is in a position of economic dependence on that person. A dependent contractor's position more closely resembles that of an employee than that of an independent contractor.

If any question arises concerning whether or not a person has employee status under the Code, the Labour Relations Board makes the final decision. The Board makes these decisions on a case-by-case basis and looks at a variety of different factors concerning what the person actually does in relation to the employer's business operations.

Federal jurisdiction

There are some employees in British Columbia who are not covered by the *Labour Relations Code* because they come within federal jurisdiction. Canada's constitution distributes most of the power affecting labour relations to the provincial governments. For that reason, most employers in British Columbia, and their employees, come within the scope of the Code. The federal government, however, retains labour relations jurisdiction over employees who work in certain industry sectors. Some examples of employees who come under federal jurisdiction are:

- Employees of the federal public service and federal Crown corporations;
- Employees engaged in works or undertakings that connect a province with another province or country (e.g. airlines, railroads, shipping, and longshoring);

- Employees of chartered banks;
- Employees in radio and television broadcasting; and,
- Employees in the grain industry.

The *Canada Labour Code* governs collective bargaining rights for these employees.

Chapter Two
The Labour Relations Board

The Labour Relations Board is an independent administrative tribunal established under the *Labour Relations Code* with the authority to administer the Code's provisions. It is the Board's responsibility to decide all matters covered by the Code.

Duties under the Code

Section 2 imposes a number of duties on the Board and other persons who exercise powers and perform duties under the Code, such as arbitrators. These duties reflect the general intention of the legislation and include:

- Recognizing the rights and obligations of employees, employers and trade unions under the Code;
- Fostering the employment of workers in economically viable businesses;
- Encouraging the practice and procedures of collective bargaining between employers and trade unions as the freely chosen representatives of employees;
- Encouraging co-operative participation between employers and trade unions in resolving workplace issues, adapting to changes in the economy, developing workforce skills and developing a workforce and a workplace that promotes productivity;
- Promoting conditions favourable to the orderly, constructive and expeditious settlement of disputes;
- Minimizing the effects of labour disputes on persons who are not involved in those disputes;
- Ensuring that the public interest is protected during labour disputes; and,
- Encouraging the use of mediation as a dispute resolution mechanism.

Structure and composition

The Labour Relations Board consists of the chair, a number of vice-chairs and an equal number of part-time representatives of both employers and unions who are called members. The chair, vice-chairs and members are all appointed by the Lieutenant Governor in Council (i.e., the provincial Cabinet) for specific terms of office.

The Board has two divisions, the Adjudication Division and the Mediation Division. The chair may appoint one or more vice-chairs as associate chairs to head either or both divisions. The chair may also designate another vice-chair as registrar of the Board.

Applications and complaints to the Board are addressed to the registrar, except requests for mediation, which are addressed to the associate chair, mediation. The Board also has a designated information officer whose job is to provide information on the Code and its application to labour relations in British Columbia.

The Adjudication Division investigates and resolves complaints and applications under the Code, generally by conducting a hearing or by requesting written submissions through which all parties affected by the complaint or dispute may present their case. The adjudication panel makes a decision binding on the parties. It can order a particular remedy such as directing a party to do (or to refrain from doing) a certain act or to make a monetary payment.

When a panel is appointed by the chair of the Board to hear a case it usually consists of the chair or a vice-chair, one representative (member) from the employer community and one from the trade union community. A panel may also consist of:

- The chair or a vice-chair sitting alone;
- The chair or a vice-chair plus two or more vice chairs (or members); or,
- Three or more vice-chairs (with or without members).

The Mediation Division provides assistance to employers and unions in collective bargaining or in improving their ongoing relationships.

Jurisdiction

The Board is the decision-maker on any question that arises under the Code and can internally reconsider its own decisions in certain circumstances. Some of the matters the Board has jurisdiction to decide are listed in Section 139 of the Code. These include questions concerning whether:

- A person is an employer or an employee;
- An organization is a union;
- A collective agreement has been entered into;
- A group of employees is a unit appropriate for collective bargaining;
- A person is a member in good standing of a union;
- A person is included in or excluded from a bargaining unit; and,
- An activity constitutes a strike, lockout or picketing.

This is not a complete list of the powers exercised by the Board, but it shows that the Legislature has given the Board the power to decide the vast majority of matters that can arise in labour relations. The courts retain their jurisdiction to review decisions of the Board under the *Judicial Review Procedure Act*. Questions about administrative fairness of the Board can be brought to the attention of the Office of the Ombudsman. In most cases all avenues of internal appeal should be exhausted prior to an issue going to the courts or the Office of the Ombudsman.

Powers of the Board

In order for the Board to conduct an effective investigation into complaints under the Code, it has been granted a number of powers by the Legislature. The general powers of the Board have been set out in Section 140 of the Code and include the following:

- To summon witnesses and compel them to give evidence under oath and produce any documents the Board considers necessary;
- To enter any workplace during working hours to inspect those premises and question any person regarding them;
- To order votes to be conducted to determine the wishes of employees or employers in relation to proceedings under the Code;
- To delegate the task of investigation to any person;
- To add parties to proceedings at any stage of the proceedings; and
- To shorten or extend the time for instituting any proceeding under the Code. (Note: care should be taken to comply with the time limits established by the Labour Relations Board Rules.)

The Board frequently delegates the task of investigation to an Industrial Relations Officer from the Ministry of Skills Development and Labour, who then files a report of his or her findings with the Board. The information within these reports is provided to the involved parties unless it relates to an individual's union membership status. The Board also gives all parties full opportunity to present evidence and make submissions on a matter before it.

Remedial authority

The Board has a wide range of remedies available to it. In most cases, the source of the Board's authority to grant a remedy is either Section 14 or Section 133 of the Code. If the Board finds that the Code has been violated, it can order the person violating the Code to, among other things:

- Refrain from continuing the breach of the Code (this order is generally referred to as a cease and desist order); and

- Rectify the contravention of the Code by the payment of money or perhaps reinstatement of an employee who has been discharged in violation of the Code.

The Board may also:

- Determine the value of an injury or loss resulting from a violation of the Code and order the violator to pay that money; and,

- Make any other order it considers appropriate.

The Board also has the discretion to refuse to make an order if it feels it is proper to do so.

A refusal to carry out an order made by the Board under the Code may result in that order being filed in the Supreme Court of British Columbia. Once the order is filed it has the same force and is enforceable in the same manner as an order of the Supreme Court.

Filing an application or complaint

The Labour Relations Board Rules require that every proceeding before the Board be commenced by the filing of an application or complaint in writing. This application or complaint should outline the nature of the case and the remedy that is being requested from the Board. In some instances, the Rules specify the form to be used when filing an application or complaint. These forms are available at the Board's offices or from any Employment Standards Branch office of the Ministry of Skills Development and Labour.

Once an application or complaint is received, the Board will make sure all parties affected are notified and invited to make submissions. The time limits within which submissions must be received are set out in the Labour Relations Board Rules.

Depending on the nature of the specific application, the Board may appoint an Industrial Relations Officer to investigate the application or complaint. Once the officer has completed the investigation, a detailed report is filed with the Board. These reports are made available to involved parties unless they contain information about whether or not a person is a member of a union. Such information is confidential.

Since the Board may make its decision on the basis of the submissions of the parties and the officer's report, that report is a valuable tool in the Board's decision-making process. For that reason, the cooperation of the parties in providing the officer with all relevant information is of great assistance to the Board in the resolution of disputes.

Do all applications made to the Board require a hearing?

No. The nature of the application and evidence will determine if an oral hearing is needed. If the Board feels an oral hearing is necessary, it will notify all concerned parties of the time and place for the hearing. Hearings are usually

held at the Board's offices in Vancouver but, a hearing can also be held at some other location closer to the matter under consideration. If someone who has been given notice of the hearing fails to attend, the Board may proceed with the hearing in the absence of that person.

Is a Board hearing like a trial?

Board hearings are less formal than court trials. The Board may be able to assist the parties to reach an agreement between themselves during the hearing process without requiring a Board ruling. Parties involved in a hearing can use a lawyer or they can represent themselves. Evidence is given under oath (or affirmation) and witnesses may be cross-examined. The Board is not strictly bound by the formal rules of evidence that apply in court.

Applications to the Board frequently result in the parties reaching a voluntary settlement. In fact, the Board attempts to assist the parties in settling their own disputes rather than having the Board determine the matter.

Once the Board has made a decision, it may inform the parties of its decision by letter, and may also provide them with a formal written decision containing detailed reasons for its ruling.

Reconsideration of decisions

If a party to a decision believes that the Board is mistaken, it can request the Board to grant leave to reconsider its decision. The grounds on which a reconsideration will be granted are fairly narrow and decisions will not be reconsidered more than once. One of the purposes of a reconsideration is to ensure that different Board panels properly interpret the *Labour Relations Code* and consistently apply the principles developed by the Board. An application for leave to apply for reconsideration must be made within 15 calendar days of the publication of the original reasons and must set out the grounds for making the application.

Role of the Minister of Skills Development and Labour

The Minister of Skills Development and Labour has an important role under the *Labour Relations Code*. For example, the Minister has the authority to:

- Direct the Board to consider whether a council of unions would be an appropriate bargaining agent for the purposes of bargaining with an employer or an employers' organization;

- Direct the Board to designate services as essential which means that the employer is required to provide those services and the union is required to allow its members to provide those services in the event of a strike or lockout;

- Make appointments of mediators, industrial inquiry commissions, and/or special officers to assist parties in resolving their labour relations disputes; and,

- Order a vote on the final offer received from the other party during a strike or lockout.

Chapter Three
Rights, Duties And Unfair Labour Practices

To ensure employees can effectively exercise their right to join a union, the Code prohibits any conduct by employers, unions or other organizations or persons that might interfere with that freedom. Anyone who engages in conduct prohibited by the Code is said to have committed an unfair labour practice.

Section 6 of the Code prohibits an employer or anyone acting on its behalf from:

- Participating in or interfering with the formation, selection or administration of a union, or contributing financial or other support to the union;
- Discharging, suspending, transferring, laying off or otherwise disciplining an employee because that employee seeks to exercise his or her right to be a member of a union;
- Discharging, suspending, transferring, laying off, or otherwise disciplining an employee except for proper cause during a union certification drive;
- Imposing any condition in a contract of employment that attempts to restrain an employee from exercising his or her rights under the Code; and,
- Threatening a penalty or promising a benefit to force an employee to refrain from becoming, or continuing to be, a member of a union.

Unless an employer's actions are intended (even in part) to interfere with an employee's rights under the Code, the employer is not prohibited from:

- Discharging, suspending, transferring, laying off or otherwise disciplining an employee for proper cause; or,
- Making any change in the operation of the business that is reasonably necessary for the proper conduct of the business.

As well, Section 8 of the Code gives all persons the freedom to express their views on any matter, including matters relating to an employer, a trade union or the representation of employees by a trade union, as long as they do not use intimidation or coercion.

Under Section 9 of the Code, it is an offence for anyone to use any kind of coercion or intimidation that might have the effect of forcing someone either to join or not to join a union or to quit a union. The language of this section is broad enough to prohibit any such tactics by employers, unions, employees or anyone else.

A union commits an unfair labour practice if it tries to organize employees at the employer's place of business during working hours without the employer's consent. This

restriction, however, does not prevent employees from discussing the merits of unionization and distributing union literature during the lunch hour or other work breaks.

In dealing with their members, unions are required to apply the normally understood principles of natural justice. They cannot engage in discriminatory practices respecting union membership or discipline of union members. Union members cannot be penalized for refusing to participate in an activity prohibited by the Code, such as an illegal strike, for example.

What happens if someone is unfairly trying to persuade employees to either join a union or not join a union?

Anyone who believes they have been the subject of this type of unfair labour practice can make a complaint to the Board.

The Board may undertake informal dispute resolution in an attempt to resolve the complaint. The Board may invite written submissions in response to the complaint and, in many cases, the Board will hold an evidentiary hearing.

If, following that process, the Board finds that an unfair labour practice has been committed, it may order a remedy which involves ceasing an act; reinstating an employee or employees; requiring the payment of wages lost due to the unfair labour practice; and/or under some circumstances granting the union certification for the bargaining unit.

If a union is attempting to gain certification or to negotiate a collective agreement and an employee is discharged, suspended, transferred, laid off or otherwise disciplined, the Code requires that the Board hold a hearing within three days of filing the complaint and make a decision on the complaint within two days of the completion of the hearing.

This is only a summary of some of the unfair labour practice provisions contained in the Code. Other unfair labour practices are discussed in greater detail elsewhere in this guide.

Duty of fair representation

The right of a union to be the exclusive bargaining agent on behalf of the employees it represents carries with it the duty of fair representation. A union cannot act in bad faith or in an arbitrary or discriminatory fashion in representing an employee in the bargaining unit. This applies regardless of whether the employee is a member of the union or not. This duty applies both in the course of negotiations and in the administration of the collective agreement.

Similarly, an employers' organization cannot act in bad faith or in an arbitrary or discriminatory manner in representing its member employers, and must carry out its functions in a fair and lawful manner.

What can a union member do if he or she feels a union has not been representing them fairly?

A union member who feels that his or her union has not met its fair representation responsibilities can make a written complaint to the Board. The Board will review the application and may proceed to a hearing if it finds that there appears to be a case against the union. In some cases the Board may make a decision on the information it has already received. If the Board finds that the union has not represented the member fairly, it has a variety of options available to remedy those acts.

Religious objections

Some employees, because of their religious convictions or beliefs, may object in general to joining unions or paying union dues and fees. Where a collective agreement requires union membership, those employees may apply to the Board for an exemption. To receive an exemption, the employee's conviction must be based on an objection to trade unions in general and not simply an objection to the policies of a specific trade union. Exempt employees are required to pay the equivalent of union dues and fees to a charitable organization.

An employee granted a religious conscience exemption is not entitled to participate in any votes held by the union or directed by the Board or by the Minister under the Code.

Chapter 4
Certification Process

Instead of dealing individually with their employer, a group of employees may decide they want a union to represent them. The Code provides the means for that union to be recognized as the exclusive bargaining agent of those employees. This recognition is called certification.

Constituting or joining a union

Usually a group of employees who want union representation will contact an established union. Employees are also free to form their own union. A union is defined as an organization or association of employees whose purposes include the regulation of relations between employees and their employer through collective bargaining. The Code requires that a union be local or provincial in character, and this can include local branches of national or international unions. A union must be viable for collective bargaining – that is, it must be capable of carrying out its responsibilities as the bargaining agent for employees.

An association or organization must be free from employer control or influence to fairly represent employees. It must also comply with the provisions of the *Human Rights Code* of British Columbia – that is, it must not exclude or otherwise discriminate against individuals on the grounds of sex, race, religion, physical or mental disability, colour, age, marital or family status, ancestry, sexual orientation, place of origin, political belief or a criminal conviction unrelated to employment activities. If the Board finds that the organization is either employer-dominated or engages in discrimination contrary to the *Human Rights Code*, it cannot certify the organization or association of employees under the Code.

How does a group of employees form a union?

To form a union, a group of employees must establish a constitution and bylaws, sign up members and elect officers. When a union applies to be certified, it must be able to satisfy the Board that it meets the prerequisites of being accepted as a union. A review of Board decisions will provide some guidance to the questions that might be raised.

More typically, employees who wish to be unionized will contact or be contacted by an existing union and apply to become a chartered local of that union, or to join an existing local union.

Application for certification

In order to apply for certification, a union must be able to demonstrate that it has at least 45 percent of the employees in the proposed bargaining unit as members in good standing. Membership in good standing means that an employee has signed an application for membership in the union.

How does a union prove it has the 45 percent support necessary to start an application?

Union support is proven by producing membership cards signed and dated by employees in the proposed bargaining unit. Membership cards must contain the following statement:

> *"In applying for a membership I understand that the union intends to apply to be certified as my exclusive bargaining agent and to represent me in collective bargaining."*

These cards are checked as part of the Board's investigation of certification applications which is described below. Employees have the option of revoking their membership in the union on or before the date the union makes an application for certification to the Board.

Upon receiving the union's application for certification, the Board advises the employer by notice of receipt of the application. The employer is required to notify all affected employees by posting a notice of the application in a conspicuous location on the employer's premises. While an application for certification is pending, an employer is not permitted to alter the wages or any other terms or conditions of employment of the employees affected by the application without the written consent of the Board.

At the same time, the Board appoints an Industrial Relations Officer to investigate the accuracy of the information contained in the union's application. The officer's first task will be to contact the employer to secure a list of all employees in the unit on the date the Board received the union's application. This information is usually obtained by examining the employer's payroll records for that date. The officer will then contact the union to determine which employees were members in good standing of the union on the date the application was received by the Board. The officer will review the membership cards produced by the union in support of its application.

Will either the employer or union receive information about individual employees as part of the certification process?

The Code and Board practices protect confidentiality of information about individual employees related to their union membership. The Board will not disclose the names of employees supporting a union's application for

certification to the employer. Neither will it give to the union personal information about employees, which may be examined during the Board's investigation.

All interested parties are invited to make submissions to the Board with respect to the application. Normally the Board will either grant or deny a certification application on the basis of the officer's report, the submissions of the parties and the representation vote. A hearing is generally scheduled by the Board at the time of application and may be necessary when an application is accompanied by unfair labour practice complaints, or a dispute about whether the bargaining unit is appropriate.

Appropriate bargaining unit

When a union applies to be certified, it is applying to represent a specific group of employees. The Board must decide whether that group of employees is appropriate for collective bargaining purposes. In order to make that determination, the Board must specify which employees should be covered by the certification. This is called the determination of the appropriate bargaining unit. The Board has the exclusive authority to make that determination.

The Board usually determines the appropriate bargaining unit before it can decide whether or not the union has the support of a majority of the employees in that unit. In seeking to determine whether a group of employees is appropriate for collective bargaining, the Board will consider a number of factors, including:

- Similarity in skills, interests, duties and working conditions;
- The physical and administrative structure of the employer;
- Functional integration;
- Geography;
- The practice and history of the current collective bargaining relationship; and,
- The practice and history of collective bargaining in the industry or sector.

Where practical, the Board prefers large bargaining units to small or fragmented groups. However, a smaller unit will be permitted as long as it is appropriate.

If the Board decides that the unit is not appropriate for collective bargaining, it must dismiss the union's application.

Requisite employee support

As already indicated, certification will be granted only if a sufficient number of the employees in the appropriate bargaining unit want union representation. Under the Code, the wishes of the employees are demonstrated through:

- Evidence from the union that at least 45 percent of the employees in the appropriate unit are members of the union in good standing; and

- A representation vote.

If fewer than 45 percent of the employees in the bargaining unit are members of the union when the union applies for certification, the Board will dismiss the application. If the union's evidence shows that at least 45 percent of the employees are members in good standing, the Board will order a representation vote. Unless the balloting is conducted by mail, the representation vote must take place within 10 days of the application for certification. This short time frame minimizes the possibility of undue influence from the employer or the union. The vote is conducted by secret ballot.

All representation votes are conducted by the Board. The Board appoints an Industrial Relations Officer from the Ministry of Skills Development and Labour to conduct the vote and both the union and employer are entitled to appoint a scrutineer to be present when the vote is conducted.

How is a representation vote conducted? What choices are employees given?

The returning officer appointed by the Board will set the date, time and place for taking the vote and will ensure that everyone who is eligible to vote has a reasonable chance to do so. All employees in the bargaining unit on a date set by the Board are eligible to vote and the returning officer will establish a list of voters. The vote may be held at the employer's premises during working hours.

All votes are conducted by secret ballot. If there is any dispute as to the eligibility of an employee to vote, the employee in question will be permitted to cast a ballot. That ballot, however, will be kept separately in a sealed envelope, and the ballot box will also be sealed until the Board decides if that employee was eligible to vote. Once all questions of eligibility have been determined, all eligible ballots will be counted.

If no union represents the bargaining unit, the employees will be given the choice of whether or not they want the applicant union to represent them.

For a union to be certified, a majority of the employees who vote must favour representation by the union. If the union does not get majority support, the Board must dismiss its application. If less than 55 percent of the employees in the appropriate

bargaining unit participate in the representation vote, the Board has the discretion to order another vote.

Effect of certification

Once the Board issues a certification, the union becomes the exclusive bargaining agent for every employee in the bargaining unit, whether or not the employee is a member of the union. The employer is not entitled to bypass the union and negotiate separate and individual contracts of employment with any of the employees in the bargaining unit.

Changing union representation

The Code permits employees to change their bargaining agent. This can be done by joining another union, which is allowed only at certain times during the life of a collective agreement. Once a new union secures the support of a majority of the employees in that unit through membership card sign-up, it can apply to the Board to be certified in place of the original union. This is often called a "raid". In order to minimize disruption at the work place, however, the Code places some limitation on the time period during which a raiding union can apply to displace an incumbent union.

Once a union has been certified to represent the employees in a bargaining unit, the Code allows that union six months to attempt to reach an agreement with the employer. If no agreement is reached after six months, or a shorter time that the Board may agree to, another union is free to apply to be certified for the same unit. If, however, a collective agreement is in force, the Board will consider applications for the same unit only during the seventh and eighth months in each year of the term of the agreement. If a raiding application (whether successful or not) is made during the seventh or eighth month of a contract year, no additional applications will be permitted within the next 22 months.

When the Board receives a timely raid application that has the support of a majority of the employees in the unit, it will order a representation vote according to the procedures described above for initial certifications.

Decertification

Just as employees can choose to be represented by a union, they can also choose to have their union's representation rights cancelled. If the Board receives an application to cancel the certification of a union and the application is signed by at least 45 percent of the employees in the bargaining unit, it will conduct a representation vote within 10 days of the application. The Board may allow a longer period if the vote is conducted by mail. These votes are normally conducted according to the same set of rules that apply to votes on applications for certification. An application for decertification cannot be made within 10 months of the date of certification of the union. This is done in order to give the new union a fair opportunity to show it can represent the bargaining unit.

If the majority of those voting are against having the union continue to represent the bargaining unit, the Board will cancel the certification. However, even where the vote goes against the union, the Board can refuse to cancel the certification where it considers

that improper interference by any party has made it unlikely that the representation vote will indicate the true wishes of the employees. If fewer than 55 percent of the eligible employees cast ballots in a decertification vote, the Board may require another vote.

The Board may also cancel the certification of a union at any time if it is satisfied that the union has ceased to be a union within the meaning of the Code, or that the employer has ceased to be the employer of the employees in the bargaining unit. As well, the Board may cancel the certification if it determines that the trade union has abandoned the bargaining unit.

The same provisions for decertification apply to employees in bargaining units that have been voluntarily recognized by the employer as they do to employees in units certified by the Board.

Effect of decertification

When a union's certification to represent a bargaining unit is cancelled and no other union is certified to take its place, any collective agreement that was in force between the union and the employer becomes void. For 10 months following the decertification, or a shorter period specified by the Board, no other trade union can apply for certification to represent the bargaining unit. The decertified union, however, can apply to be re-certified during this period if it can show evidence that it has regained the required employee support for certification.

Successor employers

When an employer disposes of a business or a part of it, the employees do not lose rights they may have gained under the Code. All of those rights will operate in their relationship with the new employer (generally referred to as the "successor employer"). Any questions respecting issues of successorship are dealt with by the Board.

The union certification transfers with "the business". If a collective agreement is in force at the time of the disposition, that agreement binds the new employer to the same extent as if the new employer had signed it.

In some cases, where a business merges with an existing business, the new employer may already be bound by a certification and a collective agreement with another union. The Board may determine that it is appropriate to combine the two bargaining units into one. In such cases, the Board must determine which certification and collective agreement will apply to all employees in the new bargaining unit. If one unit is substantially smaller than the other, the certification and collective agreement of the larger unit will usually apply. If not, the Board will conduct a representation vote of all employees in the bargaining unit so that they may choose by majority vote which union will represent them and, consequently, which collective agreement will apply.

Successor employer status applies when businesses operated under federal labour jurisdiction are sold or transferred in such a way that they come under provincial labour

jurisdiction. The new employer will normally be bound by the existing collective agreement in these cases.

Associated companies

The Board has the power to ensure that the rights that employees have gained under the Code are not avoided or adversely affected by corporate shifts or alterations. If the Board is of the opinion that:

- Associated or related activities are carried on through more than one company;
- Those companies are operated under common control or direction; and
- There exists a labour relations purpose in doing so.

The board may declare and treat those companies as one employer. This is often referred to as being a "common employer" for the purposes of the Code. The intent of such a declaration is usually to preserve existing rights and obligations under existing certifications, accreditations and collective agreements.

Council of unions

The Code contains provision for two or more unions to be designated as a single bargaining agent. The Board will consider creating such a council of unions on the direction of the Minister of Skills Development and Labour.

When a council of unions is formed, it becomes the exclusive bargaining agent for all employees previously represented by the individual unions. This does not mean the previous unions no longer have a role to play but, in the conduct of collective bargaining, they must act together under a constitution prepared by them or the Board.

Accredited employers' organizations

Employers are also entitled to band together for bargaining purposes. If a group of employers decides to seek accreditation under the Code, the result is the formation of a single bargaining agent to represent them. Like a council of unions, an accredited employers' organization will have a constitution.

Any employer member who wishes to withdraw from the organization may apply to the Board to be deleted from the accreditation. The Board will grant such an application if the employer:

- Has been included in the accreditation for at least two years; and
- Makes the application at least nine months before the expiry date of all collective agreements entered into by the employers' organization on the member employer's behalf.

Chapter Five
Collective Bargaining

After a union is certified, it is entitled to engage in collective bargaining on behalf of the employees it represents. In most cases the end result of this bargaining will be a collective agreement, a contract between the union and employer concerning the terms and conditions of employment for employees in the bargaining unit. A collective agreement is a legally enforceable document binding on all parties involved.

In order to make the bargaining process more effective, the Code sets out certain procedures that must be followed when the parties enter into collective bargaining.

Bargaining procedures and requirements

In a newly certified bargaining unit, collective bargaining is initiated when either the union or the employer serves the other party with a notice in writing to commence bargaining. Once such notice has been served, the employer is not entitled to increase or decrease the rates of pay of employees or to alter any other term or condition of their employment until four months after certification or until a collective agreement is negotiated, whichever occurs first.

If the parties are bargaining to renew an existing agreement, notice to require the other party to commence bargaining can be served only when four months or less are left in the term of the agreement then in force. However, should neither party to the agreement serve notice to commence bargaining, then the Code provides that the notice is deemed to have been given 90 days prior to expiry of the agreement.

Once a notice to commence bargaining has been served, the union and the employer must begin "good faith" bargaining within 10 days.

What can be done if one side refuses to meet or negotiate in good faith?

The requirement for good faith bargaining generally means that both parties must be sincere in their attempts to reach an agreement. This includes meeting with the other side and making every reasonable effort to conclude an agreement. The bargaining process calls for a certain amount of give and take. Failure to agree with the other side's bargaining demands does not, in itself, mean that a party is not bargaining in good faith. However, a deliberate strategy by either party to prevent reaching an agreement is considered to be bad faith bargaining. If one party engages in that kind of conduct, the other party can lodge an unfair labour practice complaint with the Labour Relations Board.

Duration

The Code provides that every collective agreement shall be for a minimum of one year, although the parties are free to agree to a longer term and frequently do so. During the life of the agreement, changes to any of its provisions can be made only with the consent of both the union and the employer.

Continuation clause

The term of a collective agreement may sometimes expire before a new agreement is reached between the employer and union. In such cases, the terms of the collective agreement remain in effect after its expiry date until either a new agreement is negotiated, a strike or lockout commences, or the union is decertified – whichever occurs first.

Joint consultation and adjustment plans

Under the Code all collective agreements must provide for a joint consultation process for the parties to deal with workplace issues that arise during the life of the collective agreement. The purpose of joint consultation is to:

- Promote cooperative resolution of workplace issues;
- Respond and adapt to changes in the economy;
- Foster the development of work-related skills; and,
- Promote workplace productivity.

If the parties do not negotiate a provision in their agreement that meets the requirements of the Code for ongoing consultation, their agreement is deemed to have a provision which says:

> "On the request of either party, the parties shall meet at least once every two months until this agreement is terminated, for the purpose of discussing issues relating to the workplace that affect the parties or any employee bound by this agreement."

At the request of both parties, the Mediation Division of the Board will appoint a facilitator to help the union and employer develop a more co-operative relationship.

When an employer introduces, or plans to introduce, a change that will affect the working conditions or employment of a significant number of employees, the employer must attempt to develop an adjustment plan with the union for dealing with the impacts of the planned change. The adjustment plan may include provisions for:

- Consideration of alternatives to the proposed change, including amendments to the collective agreement;

- Human resource planning, employee counselling and retraining;
- Notice of termination;
- Severance pay;
- Entitlement to pension, early retirement and other benefits; and/or,
- A joint process for overseeing implementation of the plan.

The employer must give the union at least 60 days notice of changes that require an adjustment plan. The parties would then meet and attempt to negotiate an adjustment plan for dealing with the change. Any agreed-upon plan is enforceable as if it were part of the collective agreement.

Failure to agree on such a plan does not preclude the employer from proceeding with the changes providing the matter was discussed in good faith with the union in a sincere endeavour to develop an adjustment plan.

First collective agreement

The Code anticipates that, in some instances, parties involved in the negotiation of their first collective agreement may experience more difficulties than unions and employers with a longer history of bargaining. If the union and employer have not been able to negotiate a first collective agreement, and the employees have voted in favour of strike action, either the union or employer can ask the Board for the appointment of a mediator. The mediator's job is to help the parties reach their own agreement voluntarily. The parties cannot engage in a strike or lockout during the mediation process.

If the parties cannot reach an agreement with the mediator's help within the time frames established by the Code, the Board will determine a process for settlement, which can include one or more of the following:

- Further mediation by a person with the power to arbitrate any unresolved issues;
- Arbitration; and/or,
- Allowing the parties to strike or lock out.

A contract settled by mediation/arbitration or arbitration alone is binding on the parties.

Chapter Six
Strikes, Lockouts And Picketing

If a union and an employer are unable to reach agreement through the bargaining process, there are a number of options available. The two most frequently used are mediation (which is covered in Chapter Eight of this guide) and strikes or lockouts.

Work stoppages

Generally speaking, a strike is a refusal to work by employees acting with a common purpose. The usual purpose of a strike is to compel an employer to agree to terms and conditions of employment. A strike need not be a complete stoppage of work. For example, overtime bans and work slowdowns can constitute a strike. A withdrawal of services by employees, which arises from a legitimate concern for their own safety or health, or to enforce a non-affiliation clause, is not a strike.

Similarly, a lockout is a restriction by the employer of work that normally would be available for employees, generally by suspending work or closing the place of employment. It is generally intended to compel those employees, or to aid another employer to compel employees, to agree to terms and conditions of employment.

The Code prohibits both strikes and lockouts during the life of a collective agreement and every agreement must contain a provision prohibiting "wildcat" strikes or lockouts. Any differences arising during its term must be settled through the grievance and arbitration procedures set out in the collective agreement.

Bargaining requirements

Even if there is no collective agreement in force, certain legal preconditions must be satisfied before a strike or lockout can begin. These preconditions are:

- The union and employer must first have engaged in collective bargaining;
- A vote must have been held to determine if the majority of employees favour a strike, or, in the case of an accredited employers' organization, if the majority of the employers in the organization favour a lockout;
- Strike or lockout notice of 72 hours must have been given to both the other party and to the Board; and,
- If a mediation officer has been appointed by the Labour Relations Board or by the Minister of Skills Development and Labour, that appointment must have come to an end, and 48 hours have passed.

These restrictions are intended to ensure that bargaining takes place before strikes and lockouts begin. They also ensure that strikes and lockouts are supported by the majority

of those who will be taking the action, and that the potential disruption caused by a strike or lockout is reduced by providing notice that it is about to occur.

What are the consequences of an unlawful strike or lockout?

If any of the preconditions mentioned above are not met, an application may be made to the Board. A variety of remedies, including cease and desist orders, are available to the Board. In the case of strike and lockout votes, the Board may order that a vote taken has no effect if the regulations governing such votes have not been followed.

Unlawful strikes and lockouts generally cause the most concern for the parties involved and to others who are inconvenienced by such actions. Any party alleging an unlawful strike or lockout can ask the Board to hold a hearing on short notice. If the Board finds that the strike or lockout is unlawful, it will order that it be stopped. It may also make other remedial orders. These orders, like any Board orders, may be filed in the Supreme Court of British Columbia and are enforceable as court orders.

Since all collective agreements prohibit strikes and lockouts during the term of the agreement, unlawful strikes and lockouts also violate the collective agreement. Compensation for damages from wildcat actions can be claimed through the grievance arbitration process in the collective agreement.

Sometimes individuals or organizations that are not involved in the collective agreement are damaged by a wildcat strike. They may seek compensation by suing those responsible for the wildcat action in the courts if the Board has first determined that there has been a contravention of the Code.

Strike and lockout votes

As mentioned above, a strike or lockout vote must be held before a strike or lockout is legal. In both cases, the vote is by secret ballot and all persons affected are entitled to vote. All employees in the bargaining unit (except those excluded from membership under the religious objections provision) can participate in a strike vote. The vote must be conducted in accordance with the Labour Relations Regulation. This regulation requires the party conducting the vote to appoint a returning officer. It also sets out the form of ballot to be used which reads:

"Are you in favour of a strike/lockout? Yes_____ No_____".

A majority of those voting must be in favour of supporting a strike or lockout to meet the legal requirements of the Code.

Notice requirements

A strike can be called only within three months after the date of a favourable strike vote. If a strike is not called during that time, another vote must be held in order to renew the union's strike mandate. The same restriction applies to lockout votes.

A union must give 72 hours written notice of its intention to strike to both the employer and the Labour Relations Board before actually engaging in strike activity. Similarly, an employer must give 72 hours written notice of a lockout. In certain instances, as when perishable property is involved, the Board may lengthen the normal 72-hour period of strike or lockout notice. If services designated as essential are involved, the union or employer must provide a new 72-hour notice if one notice period ends without any strike or lockout.

Continuation of benefits

Most existing health and welfare benefits normally provided by the employer must continue to legally striking or locked-out employees provided the union pays the total costs or premiums of such benefits. This means that striking employees do not have their benefits coverage interrupted as long as the union is willing to pay for them.

Picketing

When a legal strike or lockout is in progress, the Code allows employees to picket. Picketing is a peaceful means by which employees can increase the pressure on their employer to agree to terms and conditions of employment favourable to them. The purpose of the picket line is to persuade persons not to do work for, or do business with, the employer. A picket line, however, cannot be used to forcibly prevent persons from entering an employer's premises.

Striking or locked-out employees are entitled to picket where they normally perform work that is an integral and substantial part of the employer's operation and which is under the control and direction of the employer. Other operations of the employer may not be picketed. For example, if the employer operates at more than one location, the striking or locked-out employees can picket only the location for which their union is certified and at which they perform their work.

With the permission of the Board, picketing may also be conducted at other sites; for example, where an employer attempts to have "struck work" performed away from its own premises. Striking or locked-out employees may also picket the place of business of an "ally" of their employer. An ally is a person who assists an employer in a lockout or in resisting a lawful strike. Ally picketing is restricted to the site at which the ally performs work for the benefit of the employer who is directly involved.

Where more than one employer carries on business at the same site (referred to as a "common site"), the Board generally restricts picketing so that it affects only the employer involved in the labour dispute or the ally of that employer. The Board has the discretion to regulate picketing at a common site to ensure that the union has a way to

picket in pursuit of legitimate objectives. This means that in some circumstances the Board can allow regulated picketing at a common site that affects third parties. Such circumstances occur when the union has no other way of picketing at the workplace of the striking or locked-out employees.

Replacement workers

Just as the picketing provisions limit the lawful things employees can do during a strike or lockout, the replacement worker provisions of the Code limit what an employer can do. Employers are prohibited from using newly hired employees to replace employees who are engaged in a legal strike or who are locked out.

An employer can continue to operate during a labour dispute by using non-bargaining unit personnel at that operation. Management staff cannot be transferred or used from other operations or facilities of the employer, however, unless they were transferred before the notice to commence collective bargaining for the new agreement was given.

Any person who is not in the bargaining unit at the operation has the right to refuse to do work of bargaining unit members during a strike or lockout. To protect this right, employers are not allowed to penalize or discipline employees who refuse to do such work.

Are striking or locked-out workers still employees?

Yes, striking or locked-out workers are still considered to be employees of the employer despite their involvement in a labour dispute. They continue to be protected by the provisions of the Code. Workers who are disciplined by the employer for activities during a strike or lockout can use their grievance arbitration procedure to determine the fairness of the discipline. Frequently the settlement reached between the union and employer to end the work stoppage will include an agreement on employees who have been disciplined during the dispute.

Chapter Seven
Essential Services

The Code requires employers and unions to maintain certain essential services to the public when they take job action in a labour dispute. Essential services are those related to the health, safety or the welfare of British Columbia residents, or to the provision of primary or secondary educational programs.

If the Minister of Skills Development and Labour considers that a labour dispute poses a threat to the health, safety or welfare of the residents of the province, or to the provision of primary or secondary educational programs, he or she may direct the Board to designate essential services. Designation of essential services involves identifying the facilities and levels of service needed to prevent immediate and serious danger to the public or to prevent immediate and serious disruption to educational programs. When the Board designates services as essential, the employer is required to provide those services, and the union is required to allow its members to perform those services in the event of a strike or lockout.

One of the issues that needs to be considered is the necessary staffing levels required for various services. The employer and union involved generally work together with the assistance of a mediator to determine what services should be designated as essential and the staffing levels required. If agreement cannot be reached, the Board determines the essential services and staffing levels.

If no strike or lockout has started before the Board begins its designation process, the parties are not allowed to begin any such action until the designation process has been completed. The Code does establish tight time frames for the process of designation to occur. This process cannot be used to ll a union's right to job action.

If a strike or lockout has begun, it may continue but will be subject to any essential service designation by the Board. In this case, the union and employer may be required to restore services that have been shut down.

How are work stoppages settled in essential service disputes?

Essential service disputes are treated like other disputes, apart from those measures required to ensure that services which prevent immediate and serious danger to the health, safety or welfare of the public, or immediate and serious disruption to primary or secondary educational programs, are maintained. These unions and employers are subject to the same rules for strike votes, picketing and replacement workers as are other unions and employers. However, they do have an additional requirement for providing strike notice. The union or employer must provide a new 72-hour notice if one notice period ends without any strike or lockout occurring.

To encourage settlement, parties involved in essential service disputes have available to them the full range of mediation and other third party assistance from the Board that is available to all bargaining relationships covered by the Code. These are discussed in the next chapter of this guide.

Chapter Eight
Mediation And Dispute Resolution Assistance

The Code emphasizes resolution of collective bargaining disputes by the parties involved through a variety of means. Primary among these options is encouraging the use of mediation as a dispute resolution mechanism. Other options include:

- The appointment of special mediators or industrial inquiry commissions by the Minister of Skills Development and Labour;
- The appointment of a fact finder and by the associate chair of the Mediation Division; and,
- Ordering a last offer vote.

These options are described briefly in this chapter.

Mediation services

The majority of collective agreement negotiations are settled by the union and employer without a work stoppage. When parties have difficulty concluding a collective agreement, they may decide to involve a neutral third party, who is called a mediator, to assist them. The mediator's job is to help the parties find their own solutions to their collective bargaining problems.

Either party can apply to the Mediation Division of the Board for appointment of a mediator after collective bargaining is in progress. The Minister of Skills Development and Labour can also appoint a mediator in a collective bargaining dispute if he or she feels that a mediator will likely assist the parties in reaching a collective agreement.

After being appointed, the mediator meets with the parties and works on resolving the areas of disagreement for a new collective agreement. Unless the union and employer agree to an extension or the Minister orders an extension, the mediator will report to the associate chair on the outcome of the mediation within 20 days of the mediation appointment. If requested by the parties, or directed by the minister, the mediator must also give a report to the parties, and the report may include recommended terms of settlement.

Strikes and lockouts are not legal while a mediation officer is involved. The parties must wait until 48 hours after the Associate Chair has advised them that he or she has received the mediator's report before they can legally engage in a strike or lockout.

Special mediator

The Minister of Skills Development and Labour has the power to appoint a special mediator, with specified terms of reference, to help the union and employer negotiate a collective

agreement. A special mediator keeps the Minister informed on the progress of the mediation. The appointment of a special mediator does not restrict or prohibit a strike or lockout unless the parties so agree.

Fact finding

The Associate Chair of the Mediation Division has the authority to appoint a fact finder in any collective bargaining dispute. The role of the fact finder is to confer with the parties to determine which matters they have agreed to and which matters remain in dispute.

The fact finder's report may include any matter that is considered relevant to the settlement of a collective agreement, but the report is not binding on the parties. Both parties receive a copy of the fact finder's report and it may also be made public by the associate chair.

Last offer vote

Before a strike or lockout commences, the employer can ask for a vote by the employees in the bargaining unit on the employer's last offer received by the union during bargaining. Similarly, a union bargaining with a group of employers represented by an employers' organization can request a vote of member employers on the union's last offer. In both cases, where the vote favours acceptance of the offer, the terms of the offer voted upon become the new collective agreement between the parties. Only one last offer vote may be held for the same dispute.

After a strike or lockout has begun, the Minister of Skills Development and Labour can order a vote on the last offer of either party when he or she considers it in the public interest to do so. Again, a vote in favour of the last offer is binding on the union and employer(s).

Industrial inquiry commission

The Minister of Skills Development and Labour may appoint an Industrial Inquiry Commission to maintain or secure labour relations stability and to promote conditions leading to the settlement of disputes. Such commissions work with a specific mandate from the Minister. The union and employer may agree to be bound by the report of an Industrial Inquiry Commission.

Chapter Nine
Arbitration Procedures

Grievance arbitration

Grievance arbitration is a process for settling disputes between the union and employer during the time a collective agreement is in effect. Usually a grievance arises out of the discipline or discharge of an employee by the employer or from a disagreement over interpretation of some part of the collective agreement. The grievance arbitration process involves attempts to resolve the difference between union and employer representatives. If that fails, the parties appoint a neutral third party, an arbitrator, to make a binding ruling.

If a collective agreement does not provide for some method of resolving mid-contract disputes, the Code contains a provision for arbitration that is deemed to be included in the agreement. Also, every collective agreement must contain a provision governing dismissal or discipline of an employee covered by the agreement and which requires the employer to have just and reasonable cause for dismissing or disciplining an employee. Again, if the collective agreement does not contain such a clause, the Code provision is deemed to be included.

Do the parties have to accept a grievance arbitration decision?

Yes. The decision of an arbitrator or arbitration board is final and conclusive. Arbitration decisions can be filed in the Supreme Court and are enforceable as court orders. Appeals of arbitration decisions can be made to the Board on the grounds that one of the parties did not get a fair hearing, or that the decision is inconsistent with the principles of the Code. Appeals can also be made through the courts on questions of general law.

Collective Agreement Arbitration Bureau

The Code provides for the Collective Agreement Arbitration Bureau to be established to administer arbitration provisions in the Code. The bureau operates as part of the Labour Relations Board and is made up of Board employees. One of the functions of the bureau is to appoint settlement officers upon the request of either party to a collective agreement. When the steps of a grievance process prior to arbitration have been completed, a Board settlement officer meets with the parties to work toward settlement of the grievance.

Another function of this bureau is to make appointments of arbitrators when the parties are unable or unwilling to agree on someone themselves. In these circumstances, one of the parties applies to the director of the bureau who appoints an arbitrator with full authority to hear and decide the outcome of the grievance.

Expedited arbitration

The Collective Agreement Arbitration Bureau also administers the expedited arbitration provisions of the Code. The purpose of these provisions is to ensure that matters of urgency to one of the parties will be dealt with and decided quickly.

After the parties have gone through their grievance procedures, and before a grievance is sent to conventional arbitration, either party can apply to the director of the bureau with a request for resolution of the grievance by expedited arbitration. The director then appoints an arbitrator who has tight time limits for hearing and deciding on the grievance. If both parties agree, there is also the possibility of including a Board settlement officer in trying to settle the grievance during the expedited process.

The parties can jointly ask the director of the bureau to appoint a mediator-arbitrator to work on an expedited basis. The mediator-arbitrator attempts to mediate a settlement of the grievance between the parties. If that fails, the mediator-arbitrator will determine the grievance by expedited arbitration.

Chapter Ten
Unorganized Employees

The *Labour Relations Code* is primarily concerned with regulating relations between employees who elect union representation and their employers. The provisions of the Code do not apply to the kinds of problems encountered by employees who deal individually with their employers.

The *Employment Standards Act*, however, establishes certain minimum standards of employment for all employees in the province, whether or not they belong to a union. This act is administered directly by the Ministry of Skills Development and Labour (Employment Standards Branch), not by the Labour Relations Board. The areas covered by this legislation include minimum wages, hours of work and overtime, annual and general holidays, notice of termination of employment, maternity leave and payment of wages.

You should also be aware that the *Human Rights Code* addresses a variety of employment related matters including a prohibition on discrimination in employment based on race, colour, ancestry, place of origin, political belief, religion, marital status, physical or mental disability, sex, sexual orientation or age. The *Human Rights Code* is administered by the Ministry of the Attorney General.

If you have any questions about your rights and responsibilities as an employee or an employer, you may contact the nearest office of the Employment Standards Branch of the Ministry of Skills Development and Labour (addresses at the end of this guide) or the Government Agent in your area.

Appendix A
Labour Relations Code Sections

Part 1 - Introductory Provisions

Section 1	Definitions
Section 2	Duties under the Code
Section 3	Continuing review of the Code

Part 2 - Rights, Duties and Unfair Labour Practices

Section 4(1)	Freedom of employees to belong to a union
Section 4(2)	Freedom of employers to be members of an employers' organization
Section 5	Unfair labour practices of employers against employees exercising their rights under the Code
Section 6	Unfair labour practices of employers against membership in unions
Section 7	Limitations on activities of trade unions
Section 8	Right to communicate
Section 9	Prohibition on coercion or intimidation
Section 10	Application of principles of natural justice to internal union affairs
Section 11	Duty to bargain in good faith
Section 12	Duty of fair representation required of unions and employers' organizations to their members
Section 13	Labour Relations Board procedures for duty of fair representation complaints
Section 14	Inquiry process and remedies regarding unfair labour practices
Section 15	Right to include provisions requiring union membership in a collective agreement
Section 16	Form of assignment for deduction of wages for union fees and dues

Section 17 Exemption from union membership on grounds of religious objections

Part 3 - Acquisition and Termination of Bargaining Rights

Division 1 - Acquisition of Bargaining Rights

Sections 18 - 32 Procedures and conditions necessary for a union to obtain certification

Division 2 - Revocation of Bargaining Rights

Section 33 Cancellation of certification

Section 34 Cancellation of voluntarily recognized bargaining rights

Division 3 - Successor Rights and Obligations

Section 35 Successor employers' rights and obligations

Section 36 Application of successorship to transfers from federal to provincial jurisdiction

Section 37 Mergers or amalgamations of unions

Section 38 Several businesses treated as one employer by the Labour Relations Board

Division 4 - Voting

Sections 39 - 40 Votes by secret ballot

Division 5 - Councils of Trade Unions

Sections 41 - 42 Councils of unions

Division 6 - Employers' Organizations

Sections 43 - 44 Accredited employers' organizations

Part 4 - Collective Bargaining Procedures

Division 1 - General

Section 45 Notice to bargain collectively

Section 46 Notice before expiry of agreement

Section 47	Commencement of collective bargaining
Sections 48 - 49	Collective agreement binds union and employer
Section 50	Term of collective agreement
Section 51	Copies of agreement to be filed with the Labour Relations Board
Section 52	Appointment of local representative by extra-provincial companies

Division 2 - Joint Consultation and Adjustment Plans

Section 53	Consultation committee to be established by the union and employer
Section 54	Adjustment plans

Division 3 - First Collective Agreement

Section 55	Process to resolve a first collective agreement

Part 5 - Strikes, Lockout and Picketing

Section 56	Definition of "perishable property"
Sections 57 - 58	Strikes and lockouts prohibited during the term of a collective agreement
Section 59	Strikes and lockouts prohibited before bargaining and strike votes
Sections 60 - 61	Preconditions for strikes or lockouts
Section 62	Continuation of health and welfare benefits during a strike or lockout
Section 63	Right of employer to discontinue business and right of employees to refuse work because of danger to safety or health
Section 64	Right of union to communicate information without picketing
Sections 65 - 67	Picketing
Section 68	Prohibition on use of replacement workers during a strike or lockout
Section 69	Permitted job action during a labour dispute

Section 70 Declaratory opinions

Section 71 Right of the Labour Relations Board to refuse to make an order

Part 6 - Essential Services

Section 72 - 73 Designation and return to work in essential services disputes

Part 7 - Mediation and Disputes Resolution

Division 1 - Mediation and Fact Finding

Section 74 Appointment of mediation officers

Section 75 Notification of Labour Relations Board of a strike or lockout

Section 76 Special mediator

Section 77 Fact finding

Section 78 Last offer votes

Division 2 - Commissions and Councils

Section 79 Appointment of industrial inquiry commissions

Section 80 Appointment of industry advisory councils

Part 8 - Arbitration Procedures

Division 1 - Definitions and Purpose

Section 81 Definitions

Section 82 Purposes of arbitration provisions

Division 2 - Collective Agreement Arbitration Bureau

Section 83 Establishment of the Collective Agreement Arbitration Bureau

Division 3 - Collective Agreement Provisions

Section 84 Requirement for arbitration provisions in collective agreement

Section 85 Role of Minister regarding unworkable or inadequate arbitration provisions

Section 86 Role of Bureau regarding arbitration board appointments

Section 87	Referral of grievance to settlement officer
Section 88	Action by Labour Relations Board in situations of industrial unrest
Section 89	Authority of arbitration board
Section 90	Fees and costs of arbitration
Section 91	Delay by arbitration board
Sections 92 - 98	Powers of arbitration board
Section 99	Appeal jurisdiction of the Labour Relations Board
Section 100	Appeal jurisdiction of Court of Appeal
Section 101	Finality of decision of arbitration board
Section 102	Enforcement of arbitration award

Division 4 - Expedited arbitration

Section 104	Expedited arbitration process
Section 105	Expedited mediation-arbitration process

Division 5 - Special officer

Sections 106 - 112	Appointment and powers of special officer
Section 113	Notification to the Labour Relations Board of appointment of a special officer by the Minister
Section 114	Application of other provisions in Part 8

Part 9 - Labour Relations Board

Sections 115 - 132	Establishment, composition, powers and procedures of the Board
Section 133	Hearing of complaints and remedies for breaches of the Code
Section 134	Power to attach conditions to an order
Section 135	Filing of a Board order in Supreme Court
Sections 136 - 139	Defining the jurisdiction of the Board

Section 140 General powers of the Board

Section 141 Reconsideration of Board decisions

Section 142 Variance and cancellation of certifications or accreditations

Section 143 Power of the Board to give declaratory opinions

Part 10 - Miscellaneous

Sections 144 - 159 Miscellaneous provisions including penalty for failure to observe Board order (section 158).

Part 11 - Transitional and Consequential Provisions

Sections 160 Transition from the *Industrial Relations Act* to the *Labour Relations Code*

Appendix B
Labour Relations Terms

Adjudication Division: the division of the Labour Relations Board that investigates and resolves complaints and applications under the Code, either by settlement with the affected parties or by making a binding decision.

Ally: a person who assists an employer in a lockout or in resisting a lawful strike.

Arbitration: a method of settling a labour-management dispute by having an impartial third party conduct a hearing and render a decision that is binding on both the union and the employer.

Bargaining agent: a union certified by the Labour Relations Board as agent to bargain collectively for employees in a bargaining unit; also a person or employers' organization accredited by the Labour Relations Board and authorized by an employer to bargain on its behalf.

Bargaining unit: an employee group recognized by the Labour Relations Board as the appropriate unit for collective bargaining.

***Canada Labour Code*:** the statute regulating labour relations and collective bargaining for employees under federal jurisdiction.

Cease and desist order: an order by the Labour Relations Board directing a party to refrain from doing something.

Certification: official recognition by the Labour Relations Board that a union is the exclusive bargaining representative for employees in a particular bargaining unit.

Collective agreement: an agreement in writing between a union and an employer setting out the terms and conditions of employment, including rates of pay and hours of work.

Consent order: an order by the Labour Relations Board incorporating an agreement between the parties.

Council of unions: an association of unions that bargain together on behalf of a number of bargaining units which have been amalgamated into one larger bargaining unit.

Decertification: cancellation of a union's certification by the Labour Relations Board.

Dependent contractor: a person who performs work or services for another person on terms and conditions that more closely resemble those of an employee than of an independent contractor.

Duty of fair representation: the duty of a union or employers' organization to fairly represent its members.

Employer bargaining association (employers' organization): a bargaining association composed of more than one employer.

Good faith bargaining: the requirement that the parties meet and confer at reasonable times with the sincere intention of reaching agreement on new contract terms.

Grievance: a disagreement over the interpretation or application of a provision in a collective agreement; an allegation by one party that the other has violated the terms of the agreement.

Grievance arbitration: settlement of a dispute over how a clause or article in a collective agreement should be interpreted and applied by having an impartial third party conduct a hearing and render a decision that is binding on both the union and the employer.

Industrial inquiry commission: a person or persons appointed by the Minister of Skills Development and Labour to investigate a dispute and make recommendations for its settlement.

Interest arbitration: settlement of a collective bargaining dispute over what terms and conditions are to be included in a collective agreement by having an impartial third party conduct a hearing and render a decision that is binding on both the union and the employer.

Labour Relations Board: the agency established under the *Labour Relations Code* to administer and enforce the various provisions of the Code.

***Labour Relations Code*:** the basic statute regulating labour relations and collective bargaining in British Columbia.

Lieutenant Governor in Council: the Lieutenant Governor acting with the advice and consent of the Executive Council, which is comprised of the Premier and all government ministers. (More commonly referred to as the provincial Cabinet.)

Lockout: a restriction by an employer of work that would normally be available for the employees to perform and which is intended to compel those employees, or to aid another employer to compel employees, to agree to terms and conditions of employment.

Lockout notice: an announcement, in writing, given to the union and to the Labour Relations Board by the employer, that it is the employer's intention to lock out employees.

Mediation: a method of settling collective bargaining disputes in which the parties to the dispute use a third person - called a mediator - as an intermediary.

Mediation Division: the division of the Labour Relations Board primarily concerned with providing mediation services and relationship enhancement assistance to parties.

Mediation officer: a person appointed by the Labour Relations Board to act as a mediator.

Non-affiliation clause: a collective agreement provision, negotiated by the parties, under which the employees covered by the agreement are not required to work with persons who are not members of the employee's union or another union specified by the agreement.

Notice to bargain: a notice, served by either the union or employer to the other, to initiate collective bargaining.

Order: a ruling made by the Labour Relations Board to correct a contravention of the *Labour Relations Code*.

Perishable property: goods or commodities that are subject to imminent spoilage and that may soon become dangerous to life, health, other goods, commodities or property.

Picketing: a means by which employees attempt to increase pressure on their employer to settle an outstanding difference; also, an attempt to persuade persons not to do work for, or do business with, the employer.

Raid: an attempt by one union to gain the right to represent employees in a bargaining unit already represented by another union by persuading members of the other union to become its members.

Replacement worker: a person hired or transferred to work at a workplace where a legal strike or lockout is in effect to perform the work of the striking or locked-out employees.

Representation vote: a vote ordered by the Labour Relations Board to determine whether employees in a bargaining unit want to have a particular union represent them as their bargaining agent.

Returning officer: a person who arranges and conducts a vote by either a union or an employer association.

Settlement officer: a person appointed by the director of the Collective Agreement Arbitration Bureau to assist a union and employer to resolve a grievance.

Special mediator: a person appointed by the Minister of Skills Development and Labour to help a union and employer settle the terms and conditions of a collective agreement.

Special officer: a person appointed by the Minister of Skills Development and Labour to deal with disputes during the term of a collective agreement.

Strike: a temporary stoppage of work or a concerted action by a group of employees acting with a common purpose.

Strike notice: an announcement that the employees will go out on strike, which is in writing and given by the union to the employer and to the Labour Relations Board.

Successorship: the preservation of bargaining rights of employees of a business through the automatic transfer of the obligations under an existing certification and collective agreement from the vendor of the business to the purchaser.

Successor union: a union that succeeds another by means of a merger, amalgamation or transfer of jurisdiction.

Unfair labour practice: any conduct that interferes with the rights guaranteed by the Code - e.g. interference with the right to participate in the lawful activities of a union.

Union: an association of employees formed for the purpose of furthering their interests with respect to terms and conditions of employment through collective bargaining.

Voluntary recognition: acknowledgement by an employer of a union's status as bargaining agent for employees of the employer (generally by signing a collective agreement with the union) without formal certification of the union.

Union security clause: a clause in a collective agreement making union membership compulsory for all or some of the employees in a bargaining unit.

Wildcat strike: a strike not sanctioned by the union and which violates the collective agreement and/or the *Labour Relations Code*.

Work stoppage: a cessation of normal business operations due to a strike or lockout.

Employment Standards Branch Offices

For more information, please call: 1 800-663-3316 toll-free in British Columbia or visit our web site at www.labour.gov.bc.ca/esb/

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